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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,346	02/13/2002	Kelly G. Ammann	2599-104-C2	8235
6449	7590	10/05/2005	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			CROSS, LATOYA I	
		ART UNIT	PAPER NUMBER	
		1743		

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/073,346	AMMANN ET AL	
	Examiner LaToya I. Cross	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 February 2002.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-30 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/13/02

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

10/4/02 10/12/04 01/20/04

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-9, 20 and 21 rejected under 35 U.S.C. 102(e) as being anticipated by US patent 6,503,751 to Hugh.

Hugh teaches an incubator comprising a housing generally including an insulated housing (12) with an interior controlled atmosphere chamber (14). Chamber (14) is accessed via an outer insulated and inner heated pair of doors (16, 18). The doors are attached to the housing by way of a pair of hinges (20, 22). The door pivots from a closed to open position (and vice versa) via the hinges. At col. 11, lines 52 – col. 12, line 5, Hugh teaches a door position detection circuit to determine the position of the door. Inside the housing 12 are mounted shelves. The shelves can be considered to be receptacle carriers and the spaces between the shelves (where objects to be incubated are placed) can be considered equivalent to Applicants' claimed receptacle stations. The incubator is heated via electric heating elements (79). A microprocessor (300) controls the heater, fan and gas flow into the incubator. The fan comprises a fan motor which circulates air within the incubator (col. 12, lines 51-58). Hugh further teaches that the incubator comprises a temperature sensor (314).

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3. Claims 1, 8-23 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent 6,156,565 to Maes et al.

Maes et al teach an incubation station for test cards. The incubation station (600) comprises several cover panels (619) which form an enclosure for the carousel (604) and isolate the carousel from the ambient environment. The carousel (604) is vertically mounted and rotates about a horizontal axis. The carousel has a plurality of slots (614) for receiving test receptacles. The incubation station further comprises a heater and fan assembly. A first fan (637) is positioned below and behind air duct (622) which blows ambient air over heater assembly (638) which warms the air. A second fan (639) directs warmed air into the air table. Heat sensors (thermistors) are provided for controlling the operation of the heater and the temperature exiting the air table.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 2, 3 and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hugh or

Maes et al in view of US patent 5,882,594 to Kawaguchi et al.

The disclosures of both Hugh and Maes et al are described above. Both references differ from the instant invention in that there is no disclosure of a mixing means in the incubator.

Kawaguchi et al teach an incubator for the pretreatment of samples. The incubator is equipped with an agitation means for agitating diluted sample, promoting the pretreatment reaction stably, and promoting the main reaction. Kawaguchi et al teach agitation means in the form of vibration agitation, stirring means where the sample liquid is directly stirred or magnetic agitation.

It would have been obvious to one of ordinary skill in the art to incorporate a mixing means into the incubators of either Hugh or Maes et al. Such mixing means would allow a sample to be mixed so as to facilitate treatment of the sample or to facilitate reaction of the sample with added reagents.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700